



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2013

Mr. Jon Heining
General Counsel
Texas Legislative Council
P.O. Box 12128, Capitol Station
Austin, Texas 78711-2128

OR2013-21962

Dear Mr. Heining:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 509276.

The Texas Legislative Council (the "council") received a request for any itemized statements or invoices submitted to the council by a named individual, his partners or representatives regarding a specified investigation. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). The submitted information consists of attorney fee bills that are subject to subsection 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *See id.* The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence. We note section 552.101 of the Government Code makes information confidential under the Act. Accordingly, we will also consider your claim under section 552.101 for the submitted information.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three

factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). See *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert the information you have marked in the fee bills documents confidential communications between members and representatives of the House Select Committee on Transparency in State Agency Operations (the “committee”), the council, and the council’s outside legal counsel. You explain the council provides legal services to the committee, either directly or by contracting with outside legal counsel, as in this case. You state the communications at issue were made for the purpose of facilitating the rendition of professional legal services to the council and the committee, and these communications have remained confidential. Based on your representations and our review, we find the council has established portions of the information at issue, which we have marked, constitute attorney-client communications under rule 503. Thus, the council may withhold the information we have marked pursuant to Texas Rule of Evidence 503.¹ However, the remaining information consists of communications with parties whom you have not identified as privileged or do not consist of attorney-client communications. Accordingly, you have failed to demonstrate the applicability of the attorney-client privilege to the remaining information you have marked. Thus, the remaining information may not be withheld under Texas Rule of Evidence 503.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You contend the remaining information you have marked is confidential under section 552.101 in conjunction with the legislative privilege, also known as legislative immunity, which generally shields legislative actors from being required to testify about their legislative activities.² See *In re Perry*, 60 S.W.3d 857, 860 (Tex. 2001); see also *Gravel v. United States*, 408 U.S. 606, 615-16 (1972) (senator not required to answer questions about events that occurred in senate subcommittee meeting); *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (legislators “should be protected not only from the consequences of litigation’s results but also from the burden of defending themselves”). As such, the legislative privilege is a privilege against testifying in discovery or trial. In Open Records Decision No. 575 (1990), this office determined discovery privileges are not covered under the statutory predecessor of the Act. Therefore, you may not withhold any of the remaining

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

²The legislative privilege also refers to a legislator’s immunity from civil liability, immunity from arrest, and legislative continuances. See, e.g., TEX. CONST. art. III, § 14 (senators and representatives generally privileged from arrest while traveling to or attending legislative sessions); Civ. Prac. & Rem. Code § 30.003 (court must grant continuance if attorney is a legislative member and will be attending legislative session); *In re Perry*, 60 S.W.3d at 859 (immunity from civil liability).

information under section 552.101 of the Government Code on the basis of legislative immunity.

In summary, the council may withhold the information we have marked under Texas Rule of Evidence 503. The council must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 509276

Enc. Submitted documents

c: Requestor
(w/o enclosures)